No. 80-804

In the Supreme Court of the United States

OCTOBER TERM, 1980

DOROTHY SILVERMAN, ADMINISTRATRIX,
ESTATE OF FRED R. SILVERMAN, DECEASED,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner seeks review of the judgment of the court of appeals which held that under Section 6503(b) of the Internal Revenue Code of 1954 (26 U.S.C.), the limitations period within which the government might seek to reduce tax assessments to judgment was suspended during the time all or substantially all the assets of the decedent's estate were in the control or custody of the probate court.

The pertinent facts are as follows: The decedent, Fred. R. Silverman, died on August 18, 1963, and his will was admitted to probate on September 27, 1963. On November 27, 1964, the Internal Revenue Service issued an assessment for federal estate taxes of $89,547.11 against the estate. Thereafter, the government filed proofs of claim with the California probate court for the $50,026.30 balance of estate

taxes that remained unpaid, plus interest and other statutory additions. Because neither the administratrix of the estate nor the probate court approved this claim and it remained unpaid, the United States instituted this action in the United States District Court for the Central District of California, to reduce its claim to judgment (Pet. App. 4). In the district court, petitioner moved for summary judgment, contending that this suit was barred by Section 6502(a) of the Code, which provides that generally tax collection suits must be brought within six years of assessment. In response the government contended that Section 6503(b) suspended the running of the six-year limitations period during the pendency of the probate proceedings and for six months thereafter because the assets of the taxpayer were "in the control or custody of the court in any proceeding before any court of the United States or of any State or of the District of Columbia."[1]

The district court upheld petitioner's claim, ruling that the tolling provisions of Section 6503(b) were inapplicable where the assets were subject to probate. The court of appeals reversed. It held that as long as "all or substantially all of the assets of the decedent" were subject to the control or custody of the probate court, then Section 6503(b) tolled the running of the limitations period. It remanded the cause to the district court (Pet. App. 3, 10). See Treasury Regulations on Procedure and Administration, Section 301.6503(b)-1 (26 C.F.R.).

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[1]More specifically, the government contended that Section 6503(b) suspended the limitations period from November 2, 1966, until the time the suit here was filed. The current version of Section 6503(b) was not enacted until after the decedent died and after probate proceedings had commenced and did not become effective until November 2, 1966. See Federal Tax Lien Act of 1966, Pub. L. No. 89-719, Section 114(a), 80 Stat. 1125, 1146; Treasury Regulations on Procedure and Administration, Section 301.6503(b)-1 (26 C.F.R.)

Prior to 1966, Section 6503(b) of the Code (1964 ed.) provided that except as to "the estate of a decedent or of an incompetent," the running of the statute of limitations on collection would be suspended during the time a taxpayer's assets were under judicial control. However, in the Tax Lien Act of 1966, Congress moved to make the suspension rules equally applicable to the estates of decedents and incompetents on the ground that the reasons underlying the suspension rules with respect to other taxpayers "applie[d] equally well in the case of the estate of a decedent and in the case of an incompetent." See H. R. Rep. No. 1884, 89th Cong., 2d Sess. 22-23 (1966); S. Rep. No. 1708, 89th Cong., 2d Sess. 24 (1966). As the decision below recognized, when a taxpayer's assets are in the "control and custody of the court," they are often protected from certain of the Internal Revenue Service's administrative collection procedures (Pet. App. 8).

Petitioner urges (Pet. 13) that because the government might have brought suit against the estate even while it was still in probate, there was no practical basis for suspending the running of the statute. But as the court of appeals observed, "when *either* levy or proceeding in court is prohibited," it cannot "be said that collection procedures are unhindered" (Pet. App. 10 & n.6; emphasis in original). Thus, petitioner's contention (Pet. 13) that the Internal Revenue Service might have brought suit against the estate is beside the point, since it has been "the longstanding position of the Treasury that it may not levy on assets of a decedent's estate while in the custody of the probate court" (Pet. App. 8). See G.C.M. 9991, XI-1 Cum. Bull. 135, 137 (1932). See also *Markham* v. *Allen*, 326 U.S. 490, 495 (1946). There, this Court, in upholding the right of the Alien Property Custodian to bring suit in the district court to obtain a share of decedent's estate, noted that the resulting judgment of the district court would leave "undisturbed the

orderly administration of decedent's estate in the state probate court" and that the district court's assumption of jurisdiction in the suit would not constitute "an interference with property in the possession or custody of a state court."

In sum, it is well established that the pendency of probate proceedings in some measure impinges upon tax collection efforts. The 1966 amendments to Section 6503(b) were designed to compensate for this fact by tolling the limitations on collection of taxes owed by a decedent's estate as long as substantially all of the assets of the decedent's estate are in the custody or control of the probate court, and thus not available to satisfy the tax claim of the Internal Revenue Service, under its settled collection procedures.[2] The decision below properly applied Section 6503(b).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1981

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[2] *McAuley* v. *United States*, 525 F. 2d 1108 (9th Cir. 1975), and *United States* v. *Verlinsky*, 459 F. 2d 1085 (5th Cir. 1972), upon which petitioner relies (Pet. 7, 18), are distinguishable. Those cases, holding that judicial "control or custody" of a debtor's assets is absent when the time for filing creditors' claims has passed (*McAuley*) or when the debtor has received a discharge (*Verlinsky*) arise in the context of bankruptcy. As the court below pointed out (Pet. App. 11-12), the administration of decedents' estates presents special considerations, *viz.*, the fact that no assets owned by a decedent at his death are exempt from estate taxes and that as a matter of practical fact a decedent cannot acquire post-death assets which could be used to satisfy his tax liability. These circumstances justify a different rule on the question of whether substantially all of a debtor's assets are in the "control or custody" of a court, and thus unavailable to satisfy the tax claims of the United States.